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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/587,347	08/23/2006	Denys Sournac	0573-1012-1	6637

466 7590 02/07/2008
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EXAMINER

WISTERMAYER, ALEXIS M

ART UNIT	PAPER NUMBER
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3733

MAIL DATE	DELIVERY MODE
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02/07/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/587,347

Applicant(s)

SOURNAC ET AL.

Examiner

Alexis M. Wistermayer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 8/23/06.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 July 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 7/26/06.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document.

Regarding claim 1, the Examiner is not clear on the meaning of "the 'polyaxial type', i.e including a connection assembly" in line 8.

Regarding claim 2, line 2, "a part" is stated and appears to be different than "the part" stated in line 3 and also in line 5 of claim 8; "this connection part". The Examiner is unclear on what structural features of the claim the phrase "a part", "the part", and "this connection part" refer to.

Regarding claim 5, the phrase "for example" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. Although the claim reads "for instance" in line 5, "for instance" and "for example" are being interpreted as the same. See MPEP § 2173.05(d).

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Regarding claim 5, the phrase "preferably" in line 4, renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, and 4-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Ralph et al (US Pat 5882350).

Ralph et al. disclose vertebral osteosynthesis equipment/a polyaxial orthopedic device comprising an anchor member (120 in Fig 4) that has an elastically deformable structure (it is interpreted that if the anchor is inserted into the bone, it will deform to some degree), a rod (250 in Fig 9), a connection assembly (142 in Fig 5), a base portion (area indicated by 135 in Fig 5), a junction portion (200 and 132 in Fig 9), wherein said junction portion has a flexible structure and is slightly stretchable longitudinally (slots/recesses 141 and 133 in Fig 5 allow the junction portion to be flexible to some degree, also indicated in Col 6 Lines 10-40), wherein the junction portion is composed of an extension of the base portion (seen in Fig 10 where the base portion is indicated

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by element 132), said base portion and said connection assembly not being in contact with one another and are able to be shaped to guide the movement of a connection part (185 in Fig 9), and lateral bearing surfaces (Fig 9, the surface 203 between elements 200 and 132).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ralph et al. (US Pat 5882350).

Ralph et al. disclose a similar invention except for a rod composed of a flexible material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the rod of Ralph et al. out of a flexible material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

Conclusion

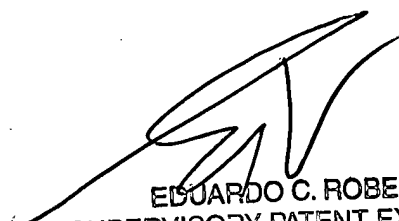
The prior art made of record and relied upon is considered pertinent to the applicant's disclosure. See PTO-892 for art cited of interest.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexis M. Wistermayer whose telephone number is 571-270-3304. The examiner can normally be reached on Monday - Friday 8 am - 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AMW 2/4/08



EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER

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